

SERVICE DATE – SEPTEMBER 8, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 697

AMTRAK EMERGENCY ROUTING ORDERS

Digest:<sup>1</sup> The Board proposed rules for when the National Railroad Passenger Corporation (Amtrak) requests Board orders to permit Amtrak trains to detour over the lines of other railroads in emergency situations. Based on comments received, the Board is terminating this proposed rulemaking and continuing the practice of appointing an individual who can act immediately on behalf of the Board.

Decided: August 31, 2015

On January 6, 2011, the Board issued a Notice of Proposed Rulemaking (NPRM) seeking public comment on regulations concerning the National Railroad Passenger Corporation (Amtrak).<sup>2</sup> The proposed regulations would provide a more formal process for Amtrak to seek emergency routing orders over the lines of other railroads and for the Board to issue such orders. Pursuant to 49 U.S.C. § 24308(b), the Board has statutory authority to require rail carriers to provide facilities immediately when necessary for the movement of Amtrak trains when Amtrak cannot operate its trains via normal routings due to rail line closures or other emergencies.

Upon consideration of the comments received, we are persuaded that because these requests occur in emergency situations, they require immediate action and the application process the Board included in the proposed rules would not be feasible or practical. We will therefore discontinue this proceeding and will continue the practice of appointing a Board staff member who can order access immediately on behalf of the Board. Such orders typically will not establish compensation and other terms. If Amtrak and the affected carriers cannot agree on terms and compensation, they may subsequently petition the Board to set them.

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> The NPRM was published in the Federal Register on January 6, 2011 (76 Fed. Reg. 766).

## BACKGROUND

Amtrak is a congressionally chartered corporation that operates intercity passenger trains on an approximately 21,000-mile rail network, serving 46 states and three Canadian provinces. With the exception of certain rail lines located primarily in the northeastern United States, Amtrak does not own the lines over which its trains operate. Most of the lines Amtrak uses are owned and operated by freight railroads, which are subject to the Board's jurisdiction.

Periodically, an established Amtrak route becomes blocked or closed as the result of derailment, unscheduled maintenance, severe weather, or other emergency. In these circumstances, if an alternate rail routing exists, Amtrak may seek to detour its trains around the blockage using the alternate route. If no alternate route is available, Amtrak may be forced to suspend train operations.

In most emergency rerouting situations, Amtrak reaches a voluntary agreement governing the terms of its use with the rail carrier that owns the alternate route. Occasionally, however, Amtrak is unable to reach an agreement. In such an event, Amtrak may seek relief from the Board as provided by 49 U.S.C. § 24308(b):

Operating During Emergencies.—To facilitate operation by Amtrak during an emergency, the Board, on application by Amtrak, shall require a rail carrier to provide facilities immediately during the emergency. The Board then shall promptly prescribe reasonable terms, including indemnification of the carrier by Amtrak against personal injury risk to which the carrier may be exposed. The rail carrier shall provide the facilities for the duration of the emergency.

In the past, the Board and its predecessor agency, the Interstate Commerce Commission, followed the practice of vesting individuals with authority to issue orders requiring railroads to make their facilities immediately available to Amtrak during emergencies. A Board order served on February 23, 1996 (Appointment of Agent to Require Emergency Routing of Amtrak Passenger Trains) (no docket number) continued this practice and vested authority in an agent.<sup>3</sup>

After the designated employee retired, the Board sought to revise its procedures for Amtrak emergency routing order requests. On January 6, 2011, the Board issued its NPRM. The Board proposed: delegating authority for issuance of emergency routing orders to the Chairman of the Board; requiring Amtrak to comply with certain filing procedures when submitting emergency routing order applications; establishing procedures for parties to appeal Amtrak emergency routing order decisions; and permitting ex parte communications.

The Board solicited comments and, on February 7, 2011, Kansas City Southern Railway Company (KCSR), the Association of American Railroads (AAR), and Amtrak filed separate

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<sup>3</sup> The Board has rarely had to issue Amtrak emergency routing orders. It last issued such an order in 1997. See STB Passenger Train Operation No. 123 (1997 Order) (no docket number) (STB served Aug. 12, 1997).

comments on the proposed rules. On February 22, 2011, KCSR and Amtrak filed separate replies to the comments.

Amtrak expresses concern that, compared with the informal procedures that the Board has historically used, the proposed rules would make it more difficult for Amtrak to obtain emergency relief on an “immediate” basis and hence run contrary to § 24308(b). Amtrak claims that it should be able to telephone in its request and receive an immediate grant of authority over the telephone, as opposed to the Board’s proposal that a decision be served within one day of filing. It argues that the Board should delegate authority to the Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC) to ensure that an agent is available 24-hours/7-days-a-week to issue such an emergency decision.<sup>4</sup>

KCSR, the only Class I carrier that does not have an emergency routing agreement with Amtrak, generally opposes the proposed rules, claiming that they allow unannounced access to a carrier’s track without waiting for a reply from the affected carrier. KCSR argues that Amtrak should be required to serve its application on the affected carrier’s chief executive officer, chief operating officer, and chief legal officer.<sup>5</sup> KCSR further claims that the rules fail to provide full liability coverage to the host carrier and give Amtrak the ability to operate at speeds different, possibly faster, than a host carrier’s freight trains.<sup>6</sup>

AAR recommends various changes to the proposal. It suggests that, to provide greater participation by a host carrier, the Board issue a decision within two days following Amtrak’s submission of an application. Alternatively, AAR proposes, the Board should be required to communicate directly with the host carrier to ascertain any concerns before issuing a decision. According to AAR, the Board also must ensure: (i) that it does not permit Amtrak to utilize routes that are not equipped to handle Amtrak trains; and (ii) that Amtrak be required to observe all safety and operating rules when operating over an emergency route.<sup>7</sup>

## DISCUSSION AND CONCLUSIONS

The Board issued the NPRM to improve the process and remove uncertainty regarding Amtrak emergency routing order applications. The rules proposed a formal process to govern how Amtrak should request emergency routing orders, the Board’s response, and any appeals of the emergency routing order decision. However, the comments as a whole demonstrate that the proposed formal process is not practical. We will therefore terminate this proceeding and continue the Board’s past practice of appointing an OPAGAC staff member to handle these emergency situations.

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<sup>4</sup> See Amtrak Comments 3.

<sup>5</sup> See KCSR Comments 4.

<sup>6</sup> See KCSR Comments 7, KCSR Reply Comments 5.

<sup>7</sup> See AAR Comments 3.

Amtrak argues that the proposed rules do not provide immediate relief, which is required in emergency circumstances and necessary to effectuate § 24308(b).<sup>8</sup> On the other hand, KCSR opposes the Board's proposed timeframe because, according to the railroad, such an expedited schedule precludes meaningful participation by host carriers in emergency access proceedings before the Board. AAR raises a similar point to KCSR, stating that if an emergency order is issued in less than two business days, the Board should be required to communicate directly with the host carrier.

Based on further consideration of these comments, we believe the proposed rules are not practical. Most importantly, the record reveals that the rules do not provide the prompt relief mandated by § 24308(b), which is necessary to handle emergencies that are happening in real-time. The comments thus indicate that the proposed rules, rather than serving the Board's goal of improving the process, would complicate and hinder it. We therefore will not adopt the formal process proposed in the NPRM and will instead allow Amtrak to continue to telephone its emergency routing requests. By the same token, the urgency of such emergency rerouting requests also means that the additional advance notice sought by KCSR and AAR may not be possible. As the Board observed when granting emergency relief in the 1997 Order, considerations of notice and public procedure are different under the emergency circumstances addressed in § 24308(b) than they are in most proceedings before the Board.<sup>9</sup> Every effort will be made, however, to involve the host carrier promptly when faced with an emergency routing request and we expect Amtrak to work with affected carriers during an emergency requiring rerouting.

Additionally, we will continue the past practice of vesting an individual with authority to issue such emergency orders. This approach has been effective,<sup>10</sup> and we believe that it will continue to be effective. OPAGAC can respond to emergency rerouting requests via telephone in a timely manner with appropriate contact with involved carriers. We are simultaneously issuing a companion decision appointing the Director of OPAGAC, or the Deputy Director(s), to act on behalf of the Board in such circumstances.<sup>11</sup>

These emergency routing orders will allow for the continued operation of Amtrak trains and typically will not address compensation and other terms. If the parties cannot agree upon them, they can subsequently petition the Board to set them. We expect parties to work together and with the Director or a Deputy Director of OPAGAC to reach a practical and efficient resolution of an access issue during an emergency situation.

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<sup>8</sup> See Amtrak Comments 3.

<sup>9</sup> KCSR does not have an agreement with Amtrak concerning emergency routing situations. If it is concerned about such a situation, we encourage it to negotiate an agreement establishing terms.

<sup>10</sup> See Amtrak Comments 1.

<sup>11</sup> Appointment of Agent to Require Emergency Routing of Amtrak Passenger Trains, EP 697 (Sub-No. 1) (STB served Sept. 8, 2015).

We note that AAR and KCSR express concerns that Amtrak emergency operations could compromise safety. KCSR goes so far as to suggest that Amtrak would not observe host carrier safety rules during emergency routing situations, for example, by operating at “passenger train speeds” on lines normally used only for freight operations.<sup>12</sup> However, Federal Railroad Administration regulations strictly govern all aspects of Amtrak operations on host carrier property. We emphasize that we expect all carriers, including Amtrak, to conduct their operations safely and responsibly. Rerouting requests must comply with Federal statutory and regulatory safety requirements.

For the foregoing reasons, we discontinue this proceeding.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is discontinued.
2. This decision is effective on the date of service.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Miller.

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<sup>12</sup> See KCSR Reply 4.